

Message Text

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FM AMEMBASSY PARIS

TO SECSTATE WASHDC 0130

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E.O. 11652: N/A

TAGS: CPRS, PFOR, FR

SUBJECT: HOLDER-KERKOW EXTRADITION

REF: STATE 121032

1. WE HAVE GIVEN CAREFUL STUDY TO DRAFT PROTEST NOTE SUGGESTED REFTEL, AND WE HAVE STRONG OBJECTIONS TO PRESENTING IT AS DRAFTED. IN OUR OPINION, THE NOTE WOULD ENGAGE US IN A FUTILE EXCHANGE WITH THE FRENCH OVER POINTS OF LAW AND PRACTICE ON WHICH FRENCH POLITICAL TRADITIONS AND JURISPRUDENCE DIFFER MARKEDLY FROM OUR OWN. SUCH AN EXCHANGE WOULD BE FUTILE IN THE IMMEDIATE CASE BECAUSE THE COURT DECISION ON HOLDER/ KERKOW IS FINAL. MOREOVER, THE BASIC POINTS AT ISSUE HAVE BEEN REPEATEDLY DISCUSSED WITH FRENCH OFFICIALS AT VARIOUS LEVELS AND IN SEVERAL MINISTRIES OVER THE PAST FEW MONTHS (PARIS 7588, 8135, 8153, 8856, 10895). AT A HIGHER LEVEL, THE AMBASSADOR HAS EXPRESSED TO MINISTER OF JUSTICE LECANUET OUR DISAPPOINTMENT OVER THE HANDLING OF THE CASE BY THE AVOCAT GENERAL AND OUR CONCERN OVER THE IMPLICATIONS OF THE DECISION FOR OTHER HIJACKING CASES (PARIS 10263).

2. AT THIS POINT, TO FOLLOW UP OUR PREVIOUS DISCUSSIONS WITH A NEGATIVE-TONED PROTEST NOTE ATTACK- ING A COURT DECISION WHICH CANNOT BE ALTERED WOULD ONLY ELICIT A VIGOROUS DEFENSE OF FRENCH POSITION. IT WOULD NOT, HOWEVER, ADVANCE OUR BASIC AIMS OF IMPROV- LIMITED OFFICIAL USE

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ING COOPERATION ON ANTI-HIJACKING MEASURES, AND

IMPROVING THE IMPLEMENTATION OF ARTICLE VI OF THE SUPPLEMENTAL CONVENTION. WE PROPOSE INSTEAD A NOTE WHICH WOULD AVOID CONTINUING THE DEBATE ON LEGAL POINTS ON WHICH WE KNOW THE FRENCH POSITION AND OUR OWN ARE IRRECONCILABLE, WHILE EXPRESSING OUR CONCERN OVER THE IMPLICATIONS OF THE HOLDER/KERKOW DECISION AND CALLING FOR FURTHER DISCUSSIONS ON ARTICLE VI. (SEE REVISED DRAFT IN SEPTEL).

3. AS FOLLOW-UP TO FORMAL NOTE, WE PROPOSE TO EXPLORE INFORMALLY WITH QUAI AND MINISTRY OF JUSTICE WAYS IN WHICH WE CAN OBTAIN RECIPROCITY UNDER ARTICLE VI OF THE SUPPLEMENTAL CONVENTION - I.E., EFFECTIVE REPRESENTATION OF USG BEFORE THE COURT IN EXTRADITION CASES. DEPENDING ON THE OUTCOME OF PRELIMINARY TALKS, THE DEPARTMENT MAY WISH TO SCHEDULE MORE FORMAL DISCUSSIONS, AS SUGGESTED IN FINAL PARAGRAPH OF ITS DRAFT NOTE. WE WILL, OF COURSE, CONTINUE TO FOLLOW CLOSELY THE PROSECUTION OPENED AGAINST HOLDER AND KERKOW FOR HIJACKING UNDER FRENCH LAW, AND TO MAKE CLEAR OUR VIEW THAT OUR MUTUAL INTEREST IN DETERRING HIJACKING REQUIRES EFFECTIVE PURSUIT OF THIS CASE.

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